

**BPB Appeal No. A1070**

**IN THE MATTER OF**

the Building Act 2004 (the Act)

**AND**

**IN THE MATTER OF**

an Appeal to the Building Practitioners Board under Section 330(1)(a) by **the Appellant** against a decision of the Registrar

---

**DECISION OF THE BUILDING PRACTITIONERS BOARD**

---

Date and location of hearing:	23 October 2012 at [omitted]
-------------------------------	------------------------------

Appeal heard by:	Dianne Johnson Colin Orchiston Brian Nightingale Bill Smith Jane Cuming	Presiding Member Board Member Board Member Board Member Board Member
------------------	---	--

Appearances by:	The Appellant [omitted] (witness for the Appellant) [omitted] (witness for the Appellant)
	The Registrar, Mark Scully, was available by telephone but was not required to participate.

## **1.0 Introduction**

- 1.1 The Appellant of [omitted] applied for Design Area of Practice (AOP) 2 Licence under s288(2) of the Act and the Licensed Building Practitioners Rules 2007<sup>1</sup> (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Design AOP 2 application and notified his decision by letter dated 20 June 2012. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 6 July 2012<sup>2</sup>, the Appellant lodged an appeal to the Board against the Registrar’s decision.
- 1.4 At a pre-hearing teleconference on 11 October 2012 the Presiding Member of the Board informed the party of the procedural matters for the appeal.

## **2.0 Licensing scheme**

- 2.1 To become licensed, a person must satisfy the Registrar that they can meet all the applicable minimum standards for licensing.<sup>3</sup> The minimum standards are set out as “competencies” in Schedule 1 to the Rules. In determining whether a person met a competency, regard must be had to the extent to which the person meets the performance indicators set out for that competency in Schedule 1<sup>4</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>5</sup>

## **3.0 Scope of the appeal**

- 3.1 An appeal proceeds by way of rehearing<sup>6</sup> however the Board will not review matters outside the scope of the appeal<sup>7</sup>.
- 3.2 The appeal seeks the following relief:  
The Appellant requested that he “would like the declined decision overturned and awarded Design AOP 2 or Design AOP1, failing this a hearing of appeal”.
- 3.3 In light of s335(4) and the Registrar’s decision letter, the Board interprets its inquiry as requiring consideration of Competencies 1, 2, 3 and 4 for a Design

---

<sup>1</sup> Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup> Completed Appeal received by Board Secretary on 6 July 2012.

<sup>3</sup> S286 of the Act and rule 4 of the Rules.

<sup>4</sup> Clause 4(2) of the Rules

<sup>5</sup> S330(1)(a) of the Act.

<sup>6</sup> S335(2) of the Act

<sup>7</sup> S335(4) of the Act

AOP 2 licence. However, s335(3)(b) provides that the Board may make any other decision that the Registrar could have made, and accordingly the Board has the jurisdiction to consider whether the competencies for a Design AOP 1 licence are relevant to its determination.

### **Design Area of Practice 2 Licence**

- Competency 1: Comprehend and apply knowledge of the regulatory environment of the building construction industry*
- Competency 2: Manage the building and design process.*
- Competency 3: Establish design briefs and scope of work and prepare preliminary design.*
- Competency 4: Develop design and produce construction drawings and documentation for Design.*

## **4.0 Registrar's report**

4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation<sup>8</sup>. The Board's Appeals Procedures require the Registrar to provide a report which includes all evidence used to reach the decision, including the assessors' recommendation.

4.2 In making the recommendation that the Design AOP 2 licence application should be declined, the Registrar noted the following reasons recorded by the Assessor:

- The Appellant immigrated to New Zealand after completing a plumbing apprenticeship in the UK. He worked in plumbing and drainage from 1975 – 2005 before taking up a role as a building manager for the [omitted] where he was working on the maintenance of schools and working with contractors and maintenance workers;
- In 2008 the Appellant established an architectural practice working on new dwellings, alterations and additions, and commercial work. The Appellant outlined that he was basically self taught and reads the codes and standards to understand the process and construction method. The Appellant reads magazines, but has not attended a seminar for specific learning, and awaits information from the council consent processing to update himself on any additional information required;
- The Projects submitted by the Appellant had a Risk matrix of 1 or 2;
- The document files for the projects supplied by the Appellant were minimal, containing basic notes, or no records of client briefs, client engagement or instructions;
- Neither of the projects submitted by the Appellant included a design path. The design sequence was not available as the Appellant worked over earlier versions which were not kept as separate files. No evidence of any sketch elevations was provided and only one outline hand drawn section was provided;

---

<sup>8</sup> clause 10 and 11 of the Rules

- There was no specification for the works and the drawings for the projects viewed were minimal; and
- The Appellant has minimal knowledge of the industry. The assessor had “extreme concerns” about the Appellant’s minimal knowledge of the codes together with the quality of the documentation supplied, and questioned how his projects obtained building consent. The Appellant did not meet the minimum standards for a Design 1 licence let alone a Design 2 as applied for.

*The basis for the Registrar’s decision to decline the application*

- 4.3 The Registrar reviewed the assessor’s report and the Appellant’s application.
- 4.4 The Registrar based his decision on the assessor’s recommendations, for the reasons set out above. The assessor, Mr Bell, has carried out around 200 assessments. The Registrar did not consider that there was sufficient reason or concern to overrule the assessor’s recommendation.

**5.0 Appellant’s Submissions**

- 5.1 The Appellant opened by reading a four page document/presentation speech that he had prepared for the appeal hearing.
- 5.2 The Appellant had appended information to his appeal application for four projects. Two of these projects, being plan 2 and plan 4, had been seen by the assessor while plan 1 and plan 3 were new submissions. The information included drawings, technical literature and photographs. No specification or contract documents were included for any of the four projects.
- 5.3 The Appellant spoke to the four projects and responded to questions from the Board members. Plan 3 had not been submitted for a building consent and had not been constructed. The other projects had all been substantially built. The Appellant was only able to confirm that a CCC had been issued for one of the projects being plan 4 – an extension to his own home. The Appellant did not know what the risk matrix scores were for the projects but thought that plan 4 might be category 2 while the others might be category 1.
- 5.4 The Appellant had two witnesses who were able to speak to implementing the design of plan 4. Both [omitted] and [omitted] hold carpentry licences and explained that they undertook the construction of the two storey extension and advised that the Appellant had provided some physical assistance with the project.
- 5.5 Documents supplied by the Appellant were not certified and his written references were unsigned. One referee wrote that he “believed” the Appellant had experience in the industry of well over 25 years and he had a drafting business for over 4 years. When asked about this reference the Appellant advised the Board that he had had a professional relationship with this referee for approximately eight months.
- 5.6 In answering questions from the Board it was clear that the Appellant has a practical approach and knowledge of building drawn from his trade experience

but he was unable to discuss the regulatory environment of the construction industry or demonstrate how he manages the building design process and develops construction drawings and documentation.

## **6.0 Board's consideration**

- 6.1 The Board noted that the Registrar was not satisfied that the Appellant met any of the competencies for the Design AOP 2 licence. It noted that the Appellant's appeal sought a Design AOP 1 licence if a Design AOP 2 licence was not granted.
- 6.2 The Board considered Competencies 1, 2, 3 and 4 for both the Design AOP 1 and AOP 2 licences. These Competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 6.3 The LBP scheme is competency based, and it is up to the Practitioner to demonstrate his competency.
- 6.4 The Board considered that the Appellant failed to provide evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 1, 2, 3 or 4 in respect of either the Design AOP 1 or the Design AOP 2 licence.

### *Board's findings*

- 6.5 The Board, therefore, concluded that the Appellant did not meet the competency requirements for a Design AOP 2 licence or for a Design AOP 1 licence.

## **7.0 Board's Decision**

- 7.1 **Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license the Appellant with a Design Area of Practice 2 Licence.**
- 7.2 **The Board further resolved that it was not appropriate to approve the granting of a Design AOP 1 licence. The appeal is therefore declined.**

## **8.0 Publication of Name**

- 8.1 Pursuant to s339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars.
- 8.2 The Board invited submissions from the Appellant on prohibition of publication of the Appellant's name and the Appellant requested his name be withheld.
- 8.3 The Board having considered the circumstances of this appeal directs that the name and the particulars of the Appellant are not to be made public.

Signed and dated this 26 day of October 2012.

---

Dianne G Johnson  
(Presiding Member)

---

**Advice Note (not part of Board's Decision)**

Extracts from the Act:

**“330 Right of Appeal**

- (1) *A person may appeal to the Board against any decision of the Registrar to—*
  - (a) *decline to licence the person as a building practitioner;*
  - ...
  
- (2) *A person may appeal to a District Court against any decision of the Board—*
  - (a) *made by it on an appeal brought under subsection (1);*
  - ...

**331 Time in which appeal must be brought**

*An appeal must be lodged—*

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
  
- (b) *within any further time that the appeal authority allows on application made before or after the period expires.”*